

David Nied (SBN 136413)
Allison M. Dibley (SBN 213104)
AD ASTRA LAW GROUP, LLP
582 Market Street, Suite 1015
San Francisco, CA 94104
Telephone: (415) 795-3579
Facsimile: (415) 276-1976
dnied@astralegal.com
adibley@astralegal.com

E. Russell Tarleton (admitted *Pro Hac Vice*)

RussT@SeedIP.com

SEED IP LAW GROUP PLLC
701 5th Avenue, Suite 5400
Seattle, WA 98104
Telephone: (206) 622-4900
Facsimile: (206) 682-6031

Attorneys for Plaintiffs
MUSIC Group Macao Commercial Offshore Limited and
MUSIC Group Services US, Inc.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

MUSIC Group Macao Commercial Offshore Limited, a Macao entity, and MUSIC Group Services US, Inc., a Washington Corporation

) N.D. Cal. Case No. CV-14-80328MISC
) W.D. Wash. Case No. 14cv621-RSM

) PLAINTIFFS MUSIC GROUP'S
) REPLY TO TWITTER'S OPPOSITION
) TO MOTION TO TRANSFER

Plaintiffs,

) Hearing: Jan. 8, 2015

) Time: 9:30 a.m.

) Courtroom C

John Does I-IX

Defendants.

I. INTRODUCTION

This cause is before the Court pursuant to plaintiffs MUSIC Group Macao Commercial Offshore Limited and MUSIC Group Services US, Inc.’s (collectively, “MUSIC Group”) Motion to Transfer Plaintiff’s Subpoena Related Motions to Issuing Court to transfer the related motion to compel discovery. CA Dkt. No. 1. On December 15, 2014, Twitter filed its Opposition to the

1 Motion to Transfer. CA Dkt. No. 11. Twitter argues that MUSIC Group has failed to show
2 “exceptional circumstances” as required under Fed. R. Civ. P. 45(f). As set forth below, MUSIC
3 Group has established that exceptional circumstances are present in this case, and the pending
4 Motion to Compel Discovery should be transferred to the issuing court in the Western District of
5 Washington.

6

7 **II. ARGUMENT**

8 **A. Twitter is Not a Local Nonparty under Rule 45**

9 Although Twitter argues that they are the type of local nonparty that the Committee
10 Notes for Fed. R. Civ. P. 45 discuss, Twitter is a global corporation with a presence around the
11 world. While it is true that Twitter is headquartered in San Francisco, Twitter has an
12 international presence, and counsel that is already familiar with the case in Seattle. As discussed
13 in MUSIC Group’s Motion to Transfer, District Courts have found that the burden on local
14 parties discussed in the Committee Notes is for the protection of individuals, not companies with
15 a national presence. *In re Subpoena to Kia Motors Am., Inc.*, 2014 U.S. Dist. LEXIS 72827, 2
16 (C.D. Cal. Mar. 6, 2014). The Central District of California has stated that “transferring the
17 [motion] would not significantly burden [the nonparty], as [the nonparty] is a national
18 automotive company, not an individual California resident, and [the nonparty’s] counsel is
19 representing the defendant in the North Carolina action.” *In re Subpoena to Kia Motors Am., Inc.*,
20 2014 U.S. Dist. LEXIS 72827, 2 (C.D. Cal. Mar. 6, 2014).

21 Twitter argues that *Kia Motors* is not applicable in the current case because “the
22 underlying case involved a rapidly approaching discovery deadline, and thus the court
23 controlling the deadline was in a better position to resolve the merits of the motion.” Non-Party
24 Twitter, Inc.’s Opposition to Plaintiffs’ Motion to Transfer (“Twitter’s Opp.”), p. 5. However,
25 MUSIC Group has filed these motions specifically because a discovery deadline is rapidly
26 approaching. The initial deadline to serve the Doe Defendants with summons and the complaint

1 was August 23, 2014. The Western District of Washington court extended the deadline for
2 service to November 23, 2014, in order to give Twitter time to produce the discovery requested
3 in the subpoenas. Because of Twitter's objections to the subpoenas, MUSIC Group was unable
4 to serve Defendants by the extended deadline of November 23, 2014, and was forced to request a
5 second extension to March 23, 2014. MUSIC Group's second deadline extension was granted by
6 the court in Seattle; however, service is still due in only three months. The Seattle court, which
7 has control over the discovery deadlines in this case, is currently in a better position to determine
8 the Motion to Compel, which has a direct impact on discovery deadlines.

9 **B. The Motions Are Tied to the Merits of the Case**

10 Even if the burden on Twitter was significant, this Court should transfer the Motion to
11 Compel to the Western District of Washington because the First Amendment issues in the
12 Motion to Compel are the exact same as the merits of the underlying case. The First Amendment
13 test that Twitter assumes this Court should meet as set forth in *SaleHoo Grp., Ltd. v. ABC Co.* is
14 essentially the determination made by the court in Washington, which is a determination of
15 whether the causes of action are facially valid. *SaleHoo Grp., Ltd. v. ABC Co.*, 722 F.Supp.2d
16 1210 (W.D. Wash. 2010). Even if the court in the Western District of Washington was not more
17 familiar with the underlying case, the danger of circumventing the authority of the Washington
18 court by deciding the merits of the case is enough to show exceptional circumstances.

19 Twitter argues that the present Motion is distinct from *Cont'l Auto. Sys. U.S., Inc. v.*
20 *Omron Electronics, Inc.*, No. 14 C 3731, 2014 WL 2808984 (N.D. Ill. June 20, 2014) because
21 the issuing court in *Cont'l Auto* had already conducted a *Markman* hearing. Twitter's Opp., p. 5.
22 However, the court in *Cont'l Auto* was not persuaded by how familiar with the case the issuing
23 court was, but rather by the fact that the issues to be determined were the very heart of the
24 underlying action. Although the Seattle court has not yet made any final decisions on the merits
25 of the case, it has considered and weighed the merits of the case when it issued its Order. Twitter
26 now asks this Court to undertake the same review of the merits of the underlying case as the

court in Seattle. In order to make the First Amendment determinations that Twitter asks for, this Court would need to determine whether the causes of action set forth in the Complaint are valid. This is precisely the type of situation that the *Cont'l Auto* court was considering when they stated that “it would involve determining a question that lies at the heart of the [underlying] litigation – namely whether Continental even has a viable patent case against Schrader after the *Markman* ruling.” *Id.*

Even if Twitter will be burdened by a transfer to the Western District of Washington, the interests of not circumventing the issuing court’s authority in deciding the merits of the underlying case far outweigh those of reducing the burden to Twitter.

III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request the Court transfer the subpoena related Motion to Compel Discovery to the issuing court at the Western District of Washington.

Dated: December 22, 2014

Respectfully Submitted,

SEED Intellectual Property Law Group PLLC

/s/ E. Russell Tarleton

E. Russell Tarleton, WSBA No. 17,006
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
(206) 622-4900

AD ASTRA LAW GROUP, LLP

Allison M. Dibley
582 Market Street, Suite 1015
San Francisco, CA 94104
Telephone: (415) 795-3579
Facsimile: (415) 276-1976
dnied@astralegal.com
adibley@astralegal.com

Attorneys for Plaintiffs
MUSIC Group

3681947_1.doc